

(1912) 06 CAL CK 0052

Calcutta High Court

Case No: None

Prasanna Kumar Adhikary

APPELLANT

Vs

Rachimuddin Howladar and
Others

RESPONDENT

Date of Decision: June 13, 1912

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 104A, 113

Citation: 15 Ind. Cas. 327

Hon'ble Judges: Chapman, J; Carnduff, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit for the recovery of arrears of rent, and, for present purposes, the facts may be thus briefly stated.

2. In February 1904, the defendant executed a kabulyat in favour of the plaintiff, agreeing to occupy 96 bighas of land at a rental of Rs. 220 per annum, and further stipulating that, should he be found at any time to be occupying more land than that specified, he would be liable to pay rent for the excess land at the same rate. The defendant now holds 117 bighas of land, and the suit was brought to recover from him rent for the years 1906 and 1907 at the rate of Rs. 268 par annum.

3. After the execution of the kabulyat, Settlement proceedings were undertaken, and fair and equitable rents were settled under Sections 104 to 104F of the Bengal Tenancy Act, 1885, as it now stands after amendment. A Record of Rights was finally published on the 5th April 1906, and, according to it, the defendant then held 117 bighas of land, and the rent fixed for that area was Rs. 220. The lower Appellate Court has come to the conclusion that, in these circumstances, Section 113 of the Tenancy Act was a bar to the recovery by the plaintiff of anything beyond the rate of Rs. 220, and it rejected the plaintiff's claim for additional rent in respect of the alleged excess area.

4. We are unable to agree with the learned District Judge in thinking that Section 113 of the Tenancy Act bars any application. But we are of opinion that the claim was not maintainable on another ground, namely, on the ground that Section 104J of the Tenancy Act renders the entry in the Record of Rights conclusive in this case.

5. The section just referred to provides that, subject to the provisions of Section 104H, all rents settled under Sections 104 A to 104F, as entered in a Record of Rights finally published u/s 103A, shall be deemed to have been correctly settled and to be fair and equitable rents. It seems to us that the meaning of this is that unless an entry in the Record of Rights, settling a rent in accordance with the provisions of Sections 104A to 104F, has been altered by means of a suit brought as contemplated by Section 104H, the entry shall prevail. In this instance, a suit was brought u/s 104H in respect of the description of the defendant in the Record of Rights, and the description was altered from that of an occupancy-ryot to that of an under-ryot; but no attempt was made, under the provisions of Section 104 to 104F, to alter the entries as to the rental and the area. The latter entries are, therefore, in the view we take of the section, conclusive, and this we may remark, was the view taken by Stephen and Doss, JJ., in *Ambika Charan Chakravarti v. Joy Chandra Ghosh* 4 Ind. Cas. 470 : 13 C.W.N. 210. In the result, then the suit was rightly dismissed by the Court of appeal below, and this appeal must be dismissed with costs.